

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3   ROBERT WADE MORSE,

Case No.: 3:16-cv-00680-MMD-WGC

4           Plaintiff,

**Order**

5   v.

Re: ECF No. 35

6   ROMEO ARANAS, et al.,

7           Defendants.

8           Before the court is Defendants' motion for leave to file medical records under seal.  
9           (ECF No. 35.)

10           In this motion, Defendants seek to file under seal exhibits containing Plaintiff's medical  
11           records in connection with a motion for summary judgment.

12           "Historically, courts have recognized a general right to inspect and copy public records and  
13           documents, including judicial records and documents." *Kamakana v. City and County of Honolulu*,  
14           447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted). "Throughout  
15           our history, the open courtroom has been a fundamental feature of the American judicial system.  
16           Basic principles have emerged to guide judicial discretion respecting public access to judicial  
17           proceedings. These principles apply as well to the determination of whether to permit access to  
18           information contained in court documents because court records often provide important,  
19           sometimes the only, bases or explanations for a court's decision." *Oliner v. Kontrabecki*, 745 F.3d  
20           1024, 1025 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165,  
21           1177 (6th Cir. 1983)).

22           Documents that have been traditionally kept secret, including grand jury transcripts and  
23           warrant materials in a pre-indictment investigation, come within an exception to the general right

1 of public access. *See Kamakana*, 447 F.3d at 1178. Otherwise, "a strong presumption in favor of  
2 access is the starting point." *Id.* (internal quotation marks and citation omitted). "The presumption  
3 of access is 'based on the need for federal courts, although independent—indeed, particularly  
4 because they are independent—to have a measure of accountability and for the public to have  
5 confidence in the administration of justice.'" *Center for Auto Safety v. Chrysler Group, LLC*, 809  
6 F.3d 1092, 1096 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016) (quoting *United States*  
7 *v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley Broad Co. v. U.S. Dist. Ct.*,  
8 *D. Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

9       There are two possible standards a party must address when it seeks to file a document  
10 under seal: the compelling reasons standard or the good cause standard. *Center for Auto Safety*,  
11 809 F.3d at 1096-97. Under the compelling reasons standard, "a court may seal records only when  
12 it finds 'a compelling reason and articulate[s] the factual basis for its ruling, without relying on  
13 hypothesis or conjecture.'" *Id.* (quoting *Kamakana*, 447 F.3d at 1179). The court must  
14 "'conscientiously balance[ ] the competing interests of the public and the party who seeks to keep  
15 certain judicial records secret.'" *Id.* "What constitutes a 'compelling reason' is 'best left to the sound  
16 discretion of the trial court.'" *Id.* (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599 (1978)).  
17 "Examples include when a court record might be used to 'gratify private spite or promote public  
18 scandal,' to circulate 'libelous' statements, or 'as sources of business information that might harm  
19 a litigant's competitive standing.'" *Id.*

20       The good cause standard, on the other hand, is the exception to public access that has been  
21 typically applied to "sealed materials attached to a discovery motion unrelated to the merits of the  
22 case." *Id.* (citation omitted). "The 'good cause language comes from Rule 26(c)(1), which governs  
23 the issuance of protective orders in the discovery process: The court may, for good cause, issue an

1 order to protect a party or person from annoyance, embarrassment, oppression, or undue burden  
2 or expense.'" *Id.*

3 The Ninth Circuit has clarified that the key in determining which standard to apply is  
4 whether the documents proposed for sealing accompany a motion that is "more than tangentially  
5 related to the merits of a case." *Center for Auto Safety*, 809 F.3d at 1101. If that is the case, the  
6 compelling reasons standard is applied. If not, the good cause standard is applied.

7 Here, Defendants seek to file exhibits under seal in connection with their motion for  
8 summary judgment which is unquestionably "more than tangentially related to the merits of a  
9 case." Therefore, the compelling reasons standard applies.

10 This court, and others within the Ninth Circuit, have recognized that the need to protect  
11 medical privacy qualifies as a "compelling reason" for sealing records. *See, e.g., San Ramon*  
12 *Regional Med. Ctr., Inc. v. Principal Life Ins. Co.*, 2011 WL89931, at \*n.1 (N.D. Cal. Jan. 10,  
13 2011); *Abbey v. Hawaii Employers Mut. Ins. Co.*, 2010 WL4715793, at \* 1-2 (D. HI. Nov. 15,  
14 2010); *G. v. Hawaii*, 2010 WL 267483, at \*1-2 (D.HI. June 25, 2010); *Wilkins v. Ahern*, 2010  
15 WL3755654 (N.D. Cal. Sept. 24, 2010); *Lombardi v. TriWest Healthcare Alliance Corp.*, 2009  
16 WL 1212170, at \* 1 (D.Ariz. May 4, 2009). This is because a person's medical records contain  
17 sensitive and private information about their health. While a plaintiff puts certain aspects of his  
18 medical condition at issue when he files an action alleging deliberate indifference to a serious  
19 medical need under the Eighth Amendment, that does not mean that the entirety of his medical  
20 records filed in connection with a motion (which frequently contain records that pertain to  
21 unrelated medical information) need be unnecessarily broadcast to the public. In other words, the  
22 plaintiff's interest in keeping his sensitive health information confidential outweighs the public's  
23 need for direct access to the medical records.

1 Here, the referenced exhibits contain Plaintiff's sensitive health information, medical  
2 history and treatment records. Balancing the need for the public's access to information regarding  
3 Plaintiff's medical history, treatment, and condition against the need to maintain the confidentiality  
4 of Plaintiff's medical records weighs in favor of sealing these exhibits. Therefore, Defendants'  
5 motion (ECF No. 35) is **GRANTED**.

6 **IT IS SO ORDERED.**

7 DATED: June 3, 2019.

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9 William G. Cobb  
10 United States Magistrate Judge  
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